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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,230	06/30/2003	Yaron Sar-Shalom	Q75969	1761

23373 7590 02/08/2008
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EXAMINER

AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2143

MAIL DATE	DELIVERY MODE
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02/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/608,230

Applicant(s)

SAR-SHALOM, YARON

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-52 are presented for examination; claims 1, 22, 32, 46 and 51 independent.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-31 are rejected under 35 U.S.C. 101 because they fail to establish a statutory category of invention. Exemplary claim 1 recites a computer-implemented system comprising an availability detector, and a messaging initiator, which are both pieces of software, which makes the system a system of software elements. Although the claim recites the limitation "for a communication device with a memory", this is not considered part of the system because it is an intended use for the software system. As such, the claims merely recite an interrelation of software elements, which fails to establish a statutory category of invention. Correction is required.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dhara et al. (US 2004/0005042) (hereinafter Dhara) in view of Gao et al. (USPN 6,970,553) (hereinafter Gao).

2. Referring to claim 1, Dhara discloses an automatic messaging client launcher for a communication device (i.e. called party) for automatically launching a messaging client (i.e. send an instant message) of an originating device (i.e. calling party cellular telephony device 106), said launcher comprising:

an availability detector (i.e. calling party dialog instance 130, 132), for detecting availability of said destination device (i.e. gets status of the telephony device) (Figure 2; ¶ 32); and

a messaging initiator associated with said availability detector for launching said messaging client (the Office construes the phrase "launching the messaging client" as sending a message to the client to display a pop-up window on the client device), when said destination is unavailable (i.e. called party dialog 132 may send an instant message to calling party device 102 to indicate the called party's busy status) (Figure 2; ¶ 23).

Dhara does not explicitly disclose an availability detector which detects a triggering event indicating that a called device is unavailable, and automatically launches a chat session based on said triggering event. In analogous art, Gao discloses another automatic client messaging system which detects when a busy signal or no answer is detected (i.e. triggering event), and will launch a chat client (i.e. chat

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session) when both the caller and callee are subscribed to the chat software (Figure 5B, 5C; col. 2, lines 30-36; col. 4, line 66 to col. 5, line 28). It would have been obvious to one of ordinary skill in the art to combine the teachings of Dhara with Gao by replacing the call detection systems of Dhara with the detection system of Gao in order to provide the benefits of the system of Gao with the system of Dhara, specifically the ability to have customized redirection techniques for the handling of incoming calls as supported by Gao (col. 1, lines 50-60).

3. Referring to claim 2, Dhara discloses the communication device comprises a telephony device (§ 23).

4. Referring to claim 3, Dhara discloses providing destination device addressing information to said messaging client (i.e. the "instructions" are forwarded to the calling party telephony device, which then transmits the instructions 210 to the calling party dialog, and then to the called party dialog 222, therefore there inherently must be some destination information provided to the calling party in order to correctly forward the instructions back to the called party dialog) (Figure 2).

5. Referring to claim 4, Dhara discloses launching the messaging client by inputting a message to said messaging client (i.e. transmitting an instant message to the telephony device to solicit instructions) (Figure 2; § 23).

6. Referring to claim 5, Dhara discloses that the reply to said message is addressed to said destination device (i.e. a request for information is transmitted from said called party to the calling party to solicit information, which is then replied and eventually forwarded back to the called party device) (Figure 3, ref. 326, 328).

7. Referring to claim 6, Dhara discloses providing destination device addressing information in a reply field of said message (i.e. set up two-way communications path to the calling party to establish communications path to accept call) (Figure 3; ref. 330; ¶ 39-40).

8. Referring to claim 7, Dhara disclose the invention substantively as described in claim 3, however does not specifically disclose the messaging client comprises an integrated component of said launcher, however it has been held obvious to make things integral. See *In re Larson* 144 USPQ 347 (CCPA 1965). By this rationale, one of ordinary skill in the art would find it obvious to combine a component of the launcher with the messaging client, thereby provided an integrated program which improves communications and reliability.

9. Referring to claim 8, Dhara discloses that the messaging client is operable to send a message to said destination device (Figure 3, ref. 324, "transmit information" is sent from the calling party to the called party).

10. Referring to claim 9, Dhara discloses the messaging client is operable to send said message upon a user command (i.e. the calling party transmits the information regarding the disposition of the call) (Figure 3; ¶ 36-39).

11. Referring to claim 10, it is inherent that the destination device is provided in a destination field, since the destination device is the recipient of the "information" provided by the calling party (¶ 36-39).

12. Referring to claim 11, Dhara discloses the messaging client is operable to display a message content input screen on said originating communication device (i.e. the request for information or request for instruction messages are displayed on the calling device) (Figures 2-3).

13. Referring to claim 12, Dhara discloses the type of message can include voice message (i.e. text to speech) (¶ 37).

14. Referring to claim 13, Dhara discloses the message includes text (i.e. it is inherent that the instant message includes text) (¶ 26).

15. Referring to claim 14, Dhara discloses the content includes default message content (i.e. if the called party is busy then a default script based on the user selected script is shown as to how to dispose of the call) (Figure 2, ref. 218; ¶ 33-34).

16. Referring to claim 15, Dhara discloses the invention substantively as described in claim 14. Dhara does not specifically disclose automatically sending the default message from the calling party to the called party, however automatic instant messaging systems are well known in the art. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for automatic message senders is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Dhara in order to provide an automatic disposition of the call based on previously established guidelines.

17. Referring to claim 16, Dhara discloses the invention substantively as described in claim 14. Dhara does not specifically disclose the default message is specified by the originating communication device, however the calling party does have the ability to determine the instruction on how to finish the call (i.e. leave a voicemail, instant message, email, etc.), thereby allowing the calling party some flexibility in how to use the system. Furthermore, user-selected messages are well known in the art (i.e. user configured systems). By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for having the user select the default message is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Dhara in order to allow the user to select the default message in order to customize the system to the users liking, and further can allow the use of multiple languages without the trouble of learning those languages (i.e. if an

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English user wished to reach a Spanish user, yet the user would be unable to understand the "instructions" if they were in Spanish.

18. Referring to claim 17, Dhara discloses the client launcher is activated and deactivated by said originating communication device (i.e. the launcher only works when the calling party actually calls a destination device, therefore the system is event-driven and will only work based on the originating device's wishes) (Figure 2).

19. Referring to claim 18, Dhara-Gao discloses detecting unavailability after a predetermined number of rings (i.e. no answer inherently requires that a predetermined number of rings must occur before a triggering signal is sent indicating that the called party does not answer) (Gao: col. 4, lines 37-52).

20. Referring to claim 19, Dhara discloses the system detects unavailability by reading a busy signal from the destination device (Figure 2, ref. 212).

21. Referring to claim 20, Dhara-Gao discloses the invention substantively as described in claim 1, however do not specifically disclose that the system is able to detect unavailability based being sent to voicemail, however these are standard triggering signals which could be easily used instead of the "busy" status signal as is used in Dhara and Gao. By this rationale, "Official Notice" is taken that both the concept and advantages of providing for using a set number of rings or being sent to

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voicemail to detect unavailability is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system to utilize a set number of rings or sent to voicemail to detect unavailability in order to customize the system to the user's liking, thereby providing a customized and tailored system to the user.

22. Referring to claim 21, Dhara discloses the system will send a message which appears to be sent from said destination device (i.e. in order to solicit information for the disposition of the call, the called party dialog will ask questions such as "what is the nature of the call", "what is the calling party's name", etc. In this sense it appears that it is the destination device which asks these questions, or a representative thereof) (Figure 2).

23. Claims 22-52 are rejected for similar reasons as stated above.

Response to Arguments

24. Applicant's arguments filed May 23, 2007 have been fully considered but they are moot in view of the new grounds of rejection presented above. Furthermore it should be noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicant argues numerous limitations of the automatic client launcher are not found within the references, however these

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particular features are merely descriptions found in the specification, not in the claims.

If Applicant wishes the claim to be interpreted in light of these features, Applicant is invited to amend the claims.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

26. Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Joseph E. Avellino/
Joseph E. Avellino, Primary Examiner
February 1, 2008